



DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Test Concerning Entry of Section 321 Low-Value Shipments Through the Automated Commercial Environment (ACE) (also known as Entry Type 86); Republication with Modifications

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document republishes with modifications and supersedes a U.S. Customs and Border Protection (CBP) notice published in the *Federal Register* on August 13, 2019, announcing a test to allow certain low-value shipments, including those shipments subject to Partner Government Agency (PGA) data requirements, to be entered by filing a new type of informal entry electronically in the Automated Commercial Environment (ACE). The test is known as the ACE Entry Type 86 Test. This document modifies the ACE Entry Type 86 Test to clarify the waiver of certain regulations and consequences of misconduct by test participants. In addition, this document makes minor technical changes to the original notice.

DATES: The ACE Entry Type 86 Test commenced September 28, 2019, and will continue until concluded by an announcement published in the *Federal Register*. Comments will be accepted throughout the duration of the test. The changes set forth in this modification will go into effect on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Comments concerning this notice and any aspect of this test may be submitted at any time during the test via email to ecommerce@cbp.dhs.gov. In the subject line of your email, please indicate, “Comment on the ACE Entry Type 86 Test.”

FOR FURTHER INFORMATION CONTACT: Christopher Mabelitini, Director, Intellectual Property Rights & E-Commerce Division, Trade Policy & Programs, Office of Trade, U.S. Customs and Border Protection, 202-325-6915, ecommerce@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

On August 13, 2019, U.S. Customs and Border Protection (CBP) published a notice (the August 13 Notice) in the *Federal Register* (84 FR 40079) announcing a test allowing low-value shipments meeting the requirements for admission under the administrative exemption in 19 U.S.C. 1321(a)(2)(C) (Section 321)¹ and the implementing regulation in 19 CFR 10.151, including those shipments subject to Partner Government Agency (PGA) data requirements, to be entered by filing a new type of informal entry electronically in the Automated Commercial Environment (ACE). The test is known as the ACE Entry Type 86 Test. The ACE Entry Type 86 Test allows CBP to address the growing volume of Section 321 low-value shipments resulting from the global shift in trade to an e-commerce platform, test the new functionality in ACE, facilitate cross-border e-commerce, and allow Section 321 low-value shipments subject to PGA data requirements to utilize a Section 321 low-value shipment entry process for the first time. Further background on entry type 86 and the entry type 86 process can be found in Sections I and II below.

This document republishes and supersedes the August 13 Notice, with the modifications described below. These changes are being made in response to enforcement challenges surrounding low-value shipments entered via the ACE Entry Type 86 Test. Such challenges include, but are not limited to, CBP's efforts to prevent the importation of illicit substances like fentanyl and other narcotics, counterfeits and other intellectual property rights violations, and goods made with forced labor. CBP's enforcement efforts for merchandise entered using entry type 86 have brought to light violations such as entry by parties without the right to make entry,

¹ For purposes of this test, all references to "Section 321" refer to the administrative exemption in 19 U.S.C. 1321(a)(2)(C), and do not refer to any other exemption in 19 U.S.C. 1321.

incorrect manifesting of cargo, misclassification, misdelivery (e.g., delivery of goods prior to release from CBP custody), undervaluation, and incorrectly executed powers of attorney.

To address these problems, CBP is making the following amendments to the ACE Entry Type 86 Test. This notice modifies the deadline to file entry type 86 from “within 15 days” of the arrival of the cargo to “upon or prior to arrival” (*see* Section IV). The traditional entry timeframe, allowing filing up to 15 days after arrival of the cargo, has proven to be inconsistent with the expedited process envisioned for the ACE Entry Type 86 Test. As a result, CBP is amending the test to require that the entry type 86 must be filed prior to or upon arrival of the cargo.

In addition, this notice clarifies that only those regulations specified in this notice are waived by the test (*see* Sections IV and V). All other regulations, including those allowing CBP to require formal entry, remain in force. This notice also clarifies the consequences of misconduct by participants in the ACE Entry Type 86 Test (*see* Section VIII). Lastly, this notice makes stylistic and structural changes, standardizing the terminology used, restructuring, and renumbering the sections of the August 13 Notice, and adding additional section headings to guide the reader.

For ease of reference, the August 13 Notice is republished below, with the amendments and clarifications described above.

I. Background

A. Exemption for Section 321 Low-Value Shipments

Section 321(a)(2)(C) of the Tariff Act of 1930 (19 U.S.C. 1321(a)(2)(C)), as amended by the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), Section 901, Public Law 114-125, 130 Stat. 122 (19 U.S.C. 4301 note), authorizes CBP to provide an administrative exemption to admit free from duty and any tax imposed on or by reason of importation, shipments of merchandise (other than bona-fide gifts and certain personal and household goods) imported by one person on one day having an aggregate fair retail value in the country of

shipment of not more than \$800. The regulations issued under the authority of section 321(a)(2)(C) are set forth in sections 10.151 and 10.153 of title 19 of the Code of Federal Regulations (19 CFR 10.151 and 10.153).

A shipment of merchandise valued at \$800 or less, which qualifies for informal entry under 19 U.S.C. 1498 and meets the requirements in 19 U.S.C. 1321(a)(2)(C), and 19 CFR 10.151, is referred to in this document as a “Section 321 low-value shipment.” Unless a CBP official has reason to believe that a Section 321 low-value shipment fails to comply with any pertinent law or regulation, section 10.153 sets forth the guidance to be applied by a CBP officer in determining whether an article or parcel shall be exempted from duty and tax under section 10.151 and qualify as a Section 321 low-value shipment. Accordingly, consolidated shipments addressed to one consignee shall be treated as one importation; alcoholic beverages and cigars (including cheroots and cigarillos) and cigarettes containing tobacco, cigarette tubes, cigarette papers, smoking tobacco (including water pipe tobacco, pipe tobacco, and roll-your-own tobacco), snuff, or chewing tobacco are not exempt; any merchandise subject to antidumping and countervailing duties is not exempt; any merchandise of a class or kind provided for in any absolute or tariff-rate quota, whether the quota is open or closed, is not exempt; and, there is no exemption from any tax imposed under the Internal Revenue Code that is collected by other agencies on imported goods.

B. “Release from Manifest” Process for Section 321 Low-Value Shipments

Pursuant to 19 CFR 10.151, merchandise subject to the Section 321(a)(2)(C) administrative exemption shall be entered under informal entry procedures. If formal entry is deemed necessary pursuant to 19 CFR 143.22, a shipment otherwise qualifying for the exemption may not be entered pursuant to 19 CFR 10.151. The relevant informal entry procedures for Section 321 low-value shipments are set forth in 19 CFR 128.24 and 19 CFR part 143, subpart C. Pursuant to the CBP regulations, a Section 321 low-value shipment may be entered, using reasonable care, by the owner, purchaser, or consignee of the shipment, or, when

appropriately designated by one of these persons, a customs broker licensed under 19 U.S.C. 1641. *See* 19 CFR 143.26(b).

Section 321 low-value shipments may be entered by presenting the bill of lading or a manifest listing each bill of lading. *See* 19 CFR 143.23(j)(3). This type of informal entry is termed the “release from manifest” process. Generally, such shipments are released from CBP custody based on the information provided on the manifest or bill of lading. Such information may be provided by express consignment operators, carriers, or brokers. The following information must be provided as part of the “release from manifest” process: the country of origin of the merchandise; shipper name, address and country; ultimate consignee name and address; specific description of the merchandise; quantity; shipping weight; and value. *See* 19 CFR 128.21(a) and 19 CFR 143.23(k). No Harmonized Tariff Schedule of the United States (HTSUS) subheading or entry summary is required on an advance manifest for Section 321 low-value shipments. *See* 19 CFR 143.23(k) and 19 CFR 128.24(e).

A Section 321 low-value shipment is not exempt from PGA requirements. Many agencies do not have *de minimis* exemptions for their PGA reporting requirements, and require strict accountability of imported goods for national security, health and safety reasons, and to identify specific shipments of potentially violative products for reporting or enforcement targeting purposes. Low-value shipments may also require the payment of applicable PGA duties, fees or applicable excise taxes collected by other agencies. Shipments that have PGA data reporting requirements, or require the payment of any duties, fees, or taxes may not benefit from the use of a less complex Section 321 entry process like the “release from manifest” process, and must be entered using the appropriate informal or formal entry process to ensure that the PGA requirements are met. All shipments subject to PGA requirements are currently ineligible for entry under the “release from manifest” process.

II. Establishment of an Electronic Entry Process for Section 321 Low-Value Shipments Through ACE

On August 13, 2019, CBP published the August 13 Notice announcing the ACE Entry Type 86 Test to allow Section 321 low-value shipments, including those shipments subject to PGA data requirements, to be entered by filing a new type of informal entry electronically in ACE. Prior to the development of entry type 86, Section 321 low-value shipments subject to PGA requirements were required to be entered using the more complex informal entry type “11” or formal entry. The ACE Entry Type 86 Test provides a less complex entry and release process for Section 321 low-value shipments, including those subject to PGA data requirements, and expedites the clearance of compliant Section 321 low-value shipments into the United States through the use of ACE. Merchandise imported by mail is excluded from the ACE Entry Type 86 Test and may not be entered under the entry type 86.

In developing the ACE Entry Type 86 Test, CBP coordinated with the Commercial Customs Operations Advisory Committee (COAC), trade industry representatives, and PGAs, and considered the public comments received from the “Administrative Exemption on Value Increased for Certain Articles” interim final rule (Administrative Exemption IFR). On August 26, 2016, CBP published the Administrative Exemption IFR in the *Federal Register* (81 FR 58831), which amended the CBP regulations to implement section 901 of TFTEA by raising the value of the Section 321 administrative exemption from \$200 to \$800, and solicited comments regarding the collection of data on behalf of PGAs for shipments valued at \$800 or less. CBP received eight public comments. A more detailed analysis of the comments received and CBP’s responses to the public comments will be addressed at a later date. In summary, of the eight public comments, seven addressed the collection of data for Section 321 low-value shipments. Among these seven comments, five commenters encouraged the automated clearance of Section 321 low-value shipments using ACE and the collection of PGA data using a Section 321 *de minimis* entry process.

Five of the commenters encouraged CBP to automate Section 321 clearance using ACE. These commenters pointed out that automating Section 321 clearance through ACE will increase

CBP's ability to provide risk-based targeting of inbound shipments, assure supply chain security, enforce trade laws, and protect intellectual property rights. Various ACE clearance processes were suggested by the commenters, including using the Automated Broker Interface (ABI) to allow the owner, purchaser, consignee, or designated customs broker to file the necessary information.

Most commenters also asserted that any ACE Section 321 clearance process should allow for the submission of PGA data. One commenter pointed out that unless Section 321 low-value shipments subject to PGA requirements could be cleared under a Section 321 *de minimis* entry process, the *de minimis* exemption would be of little use to the greater public because a large percentage of these imported shipments are regulated by PGAs. Commenters also noted that the primary purpose of increasing the Section 321 administrative exemption was to benefit e-commerce micro and small businesses engaging in global trade and the vast majority of these businesses lack the capacity to comply with complex trade rules.

CBP believes that the development of the new entry type 86 effectively addresses the public comments; facilitates legitimate trade while also allowing CBP to enhance its targeting capabilities; ensures that PGAs can identify potentially violative products for reporting or enforcement targeting purposes while allowing filers to utilize a less complex entry process; and decreases the challenges faced by CBP in targeting, locating and examining Section 321 low-value shipments by collecting necessary data. Processing Section 321 low-value shipments in ACE utilizes the "single window" system, thereby granting all government agencies involved with the importation of goods into the United States access to data concerning the shipments and gives the trade a single mechanism to enter data.

III. Authorization for the Test

The test described in this notice is authorized pursuant to 19 CFR 101.9(a), which grants the Commissioner of CBP the authority to impose requirements different from those specified in the CBP regulations for purposes of conducting a test program or procedure designed to evaluate

the effectiveness of new technology or operational procedures regarding the processing of passengers, vessels, or merchandise, to the extent that such different requirements do not affect the collection of the revenue, public health, safety, or law enforcement.

The ACE Entry Type 86 Test allows CBP to test ACE functionality, and to test the new operational procedures involved with the new entry type, including any challenges that may result and any coordination that is necessary with PGAs. Additionally, the test allows CBP to determine if entry type 86 effectively addresses the threats and complexities resulting from the global shift in trade to an e-commerce platform and the vast increase in Section 321 low-value shipments, and facilitates cross-border e-commerce.

IV. ACE Entry Type 86 Test Requirements

A Section 321 low-value shipment may be entered by the owner, purchaser, or consignee of the shipment, or, when appropriately designated by one of these persons, a customs broker licensed under 19 U.S.C. 1641. *See* 19 CFR 143.26(b). For purposes of the ACE Entry Type 86 Test, CBP is deviating from this regulation and requiring that consignees intending to file an entry type 86 appoint a customs broker to act as the importer of record (IOR) for the shipment. All customs brokers designated to enter a qualifying entry type 86 shipment must be appointed through a valid power of attorney, and must comply with all other applicable broker statutory and regulatory requirements. *See* 19 CFR 141.46; *see, e.g.*, 19 U.S.C. 1641; 19 U.S.C. 1484; 19 CFR part 111; 19 CFR part 141. The filing of entry type 86 is considered “customs business” under 19 U.S.C. 1641.²

To participate in this test, an owner, purchaser, or customs broker appointed by an owner, purchaser, or consignee will file an informal entry type 86 in ACE through ABI. ABI allows

² Pursuant to 19 U.S.C. 1641, “customs business” is defined as those activities involving transactions with CBP concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by CBP on merchandise by reason of its importation, or the refund, rebate, or drawback of those duties, taxes, or other charges. “Customs business” also includes the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills, or parts thereof, intended to be filed with CBP in furtherance of such activities, whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to CBP.

participants to electronically file all required import data with CBP, and transfers that data into ACE. To participate in ABI, a filer must meet the requirements and procedures set forth in 19 CFR part 143, subpart A, and must meet the technical requirements set forth in the Customs and Trade Automated Interface Requirements (CATAIR).³

The test is open to all owners, purchasers, consignees, and designated customs brokers of Section 321 low-value shipments, including those subject to PGA requirements, imported by all modes of cargo transportation, except mail. CBP encourages all eligible parties to participate in this test to test the functionality of the new entry type. Importers of Section 321 low-value shipments that do not contain any PGA data requirements may continue to utilize the “release from manifest” process or may utilize the ACE Entry Type 86 Test.

When filing an entry type 86, a bond and entry summary documentation are not required. Under entry type 86, the importing party is exempt from payment of the harbor maintenance tax and merchandise processing fee for merchandise released as a Section 321 low-value shipment. *See* 19 CFR 24.23(c)(1)(v) and 24.24(d)(3). However, any merchandise that is not exempt from the payment of any applicable PGA duties, fees, or taxes imposed under applicable statute or regulation by other agencies on imported goods does not qualify for entry as a Section 321 low-value shipment. An entry type 86 filing that is determined to owe any duties, fees, or taxes will be rejected by CBP and must be refiled using the appropriate informal or formal entry process. Additionally, CBP may require formal entry for any merchandise if it is deemed necessary for import admissibility enforcement purposes, revenue protection, or the efficient conduct of customs business. *See* 19 CFR 143.22. Further clarification pertaining to CBP’s authority under 19 CFR 143.22 and the waiver of certain regulations under the ACE Entry Type 86 Test can be found below in Section V.

³ *See* General Notice of August 26, 2008 (73 FR 50337) for a complete discussion on the procedures for obtaining an ACE Portal Account.

An entry type 86 requires the owner, purchaser, or customs broker appointed by the owner, purchaser, or consignee to file the following data elements with CBP at any time prior to or upon arrival of, the cargo:

- (1) The bill of lading or the air waybill number;
- (2) Entry number;
- (3) Planned port of entry;
- (4) Shipper name, address, and country;
- (5) Consignee name and address;
- (6) Country of origin;
- (7) Quantity;
- (8) Fair retail value in the country of shipment;
- (9) 10-digit HTSUS number;
- (10) IOR number of the owner, purchaser, or broker when designated by a consignee (conditional).

The IOR number is a conditional ACE Entry Type 86 Test data element and is required when the shipment is subject to PGA data reporting requirements. The IOR number provided must be that of the shipment's owner, purchaser, or broker when designated by a consignee.

Upon receipt of the data in an entry type 86 filing, CBP will determine whether the shipment is subject to PGA data reporting requirements. Any PGA data reporting requirements would be satisfied by the PGA Message Set and the filing of any supporting documentation via the Document Image System (DIS). The PGA Message Set enables the trade community to electronically submit all data required by the PGAs only once to CBP, eliminating the necessity for the submission and subsequent manual processing of paper documents, and makes the required data available to the relevant PGAs for import and transportation-related decision making. See the December 13, 2013 *Federal Register* notice (78 FR 75931) for a further

discussion of the PGA Message Set and the October 15, 2015 *Federal Register* notice (80 FR 62082) for a further discussion of DIS.

A “CBP release” message indicates that CBP has determined that the Section 321 low-value goods may be released from CBP custody. All merchandise released by CBP is released conditionally and remains subject to recall through the issuance of a Notice of Redelivery. Merchandise that is regulated by one or more PGAs may not proceed into commerce until CBP releases the merchandise and all PGAs that regulate the merchandise have issued a “may proceed” message.

The definitions of the ACE data elements, the technical requirements for submission, and information describing how filers receive transmissions are set forth in the CATAIR guidelines for ACE, which may be found at <https://www.cbp.gov/trade/ace/catair>.

V. Waiver of Regulations Under the Test

For purposes of this test, 19 CFR 10.151 will be waived for test participants only insofar as the informal entry procedures for “release from manifest” are inconsistent with the requirements in this notice. Additionally, 19 CFR 128.21(a), 128.24(e), 143.23(j) and (k), and 143.26(b) will be waived for test participants to the extent such procedures are inconsistent with the requirements of this notice. In addition, 19 CFR 141.5 is waived to the extent that it conflicts with the requirement in this notice that entry type 86 be filed prior to arrival, or upon arrival of the cargo. Regulations not specifically waived by the ACE Entry Type 86 Test remain in full force, including CBP’s authority under 19 CFR 143.22 to require that any shipment, even a low-value shipment that would otherwise be eligible for entry using entry type 86, be formally entered instead. As noted below, if CBP requires that a shipment be formally entered, the filer will have up to 15 days after arrival to file formal entry, consistent with 19 CFR 141.5 and 142.2(a).

Pursuant to 19 CFR 143.22, CBP has the authority to require that any shipment, including a shipment for which an entry type 86 has been filed, be formally entered instead. In particular,

CBP may require formal entry for a shipment that would otherwise be eligible for informal entry, including an entry type 86, if formal entry is “deemed necessary for import admissibility enforcement purposes; revenue protection; or the efficient conduct of customs business.” *Id.*

This notice clarifies that when CBP exercises its authority under 19 CFR 143.22 to require formal entry for a shipment, the entry type 86 filer will be notified that the entry type 86 filing will not be accepted for purposes of making entry. In such circumstances, the requirement to file entry within 15 days of the date of arrival for the merchandise is not waived and will not be satisfied by the rejected entry type 86 filing. 19 CFR 141.5; 19 CFR 142.2(a). In order to comply with CBP’s determination to require formal entry for a shipment, a party with the right to make entry must file an entry and entry summary in accordance with 19 CFR parts 141 and 142, which include the associated filing timeframes and the requirement to obtain a bond. 19 CFR 142.4(a). Failure to timely file the requisite entry summary will result in an immediate demand for liquidated damages in the entire amount of the bond in the case of a single entry bond, or an equivalent amount if a continuous bond was filed. 19 CFR 142.15.

VI. Comments

All interested parties are invited to comment on any aspect of this test at any time. CBP requests comments and feedback on all aspects of this test, including the design, conduct and implementation of the test, in order to determine whether to modify, alter, expand, limit, continue, end, or fully implement this new entry process.

VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), an agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget (OMB). The collections of information for the ACE Entry Type 86 Test are included in an existing collection for CBP Form 3461 (OMB control number 1651-0024).

VIII. Misconduct Under this Test

A test participant may be subject to civil and criminal penalties, administrative sanctions, or liquidated damages, as provided by law, for any of the following:

- (1) Failure to follow the rules, requirements, terms, and conditions of this test;
- (2) Failure to exercise reasonable care in the execution of participant obligations; or
- (3) Failure to abide by applicable laws and regulations that have not been waived.

These penalties, administrative sanctions, and liquidated damages may be imposed under any statutory authority or under any CBP regulations that have not been waived by the test. CBP may suspend or remove a filer from further participation in the ACE Entry Type 86 Test based on a determination that that filer's participation in the test poses an unacceptable compliance risk.

Dated: January 10, 2024.

AnnMarie R. Highsmith,
Executive Assistant Commissioner,
Office of Trade.